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Working to protect and restore Western Watersheds and Wildlife

February 10, 2017

Bureau of Land Management
Richfield Field Office
Attn: Cindy Ledbetter
150 East 900 North
Richfield, UT 84701
utrmail@blm.gov

Submitted via email

Subject: DOI-BLM-UT-CO20-2017-0001-EA (June 2017 Oil Gas Lease Sale)

Dear Ms. Ledbetter:

Western Watersheds Project (WWP) is pleased to provide these comments in response to the BLM request for comments on the Richfield Field Office (RFO) July 2017 Oil and Gas Lease Sale Environmental Assessment (EA).

Western Watersheds Project is a non-profit organization with more than 5,000 members and supporters that works to influence and improve public lands management throughout the West with a primary focus on the impacts of livestock grazing on 250,000,000 acres of western public lands, including impacts to ecological, biological, cultural, historic, archaeological, wilderness and scenic resources. Western Watersheds Project works through education, scientific study, public policy initiatives, and litigation. Western Watersheds Project and its staff and members use and enjoy the public lands, including the lands at issue here, and its wildlife, cultural and natural resources for health, recreational, scientific, spiritual, educational, aesthetic, and other purposes.

Western Watersheds Project also has a direct interest in mineral development that occurs in areas with significant wildlife populations, particularly Greater sage-grouse, and in areas that contain winter range habitat for other migratory species. In this case, the Proposed Action/Alternative A (PA) will have impacts on Greater sage-grouse, Golden eagles and other sensitive raptor species, and crucial winter habitat for mule deer and elk. It occurs in an area that is currently being grazed and is expected to be grazed in the future.

Greater Sage Grouse

IM 2016-143

The EA acknowledges that 11 of the 20 parcels proposed for this lease sale contain Priority Habitat Management Areas (PHMA) for Greater sage-grouse (GRSG) within the Parker Mountain Population Area (PMPA). (EA at 19)

BLM's Instruction Memorandum No. 2016-143: Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization IM 2016-143 sets out the methods by which BLM will prioritize leasing in and around Greater sage-grouse habitat. The IM directs the agency to prioritize leasing in the following order:

1. Lands outside of GHMAs and PHMAs: BLM State Offices will first consider leasing Expressions of Interest (EOIs) for lands outside of PHMAs and GHMAs. These lands should be the first priority for leasing in any given lease sale.
2. Lands within GHMAs: BLM State Offices will consider EOIs for lands within the GHMAs, after considering lands outside of both GHMAs and PHMAs. When considering the GHMA lands for leasing, the BLM State Office will ensure that a decision to lease those lands would conform to the conservation objectives and provisions in the GRSG Plans (e.g., Stipulations).
3. Lands within PHMAs: BLM state offices will consider EOIs for lands within PHMAs after lands outside of GHMAs and PHMAs have been considered, and EOIs for lands within GHMA have been considered. When considering the PHMA lands for leasing, the BLM State Offices will ensure that a decision to lease those lands would conform to the conservation objectives and provisions in the GRSG Plans (e.g., Stipulations) including special consideration of any identified SFAs.

As the EA acknowledges, PHMA have been identified as having the highest GRSG habitat value in order to maintain suitable GRSG populations in Utah. (EA at 19) Nevertheless, the EA for the Richfield Field Office's June 2017 lease sale states that 11 of the 20 parcels being offered are within PHMA in the Parker Mountain Population Area. Additionally, the EA states that there is one lek approximately two miles north of parcel 021 and that this lek would be within four miles of parcels 019, 020, 021, and 022. (EA at 19)

The Richfield Field Office must explain why it is choosing to offer leases in PHMA and describe the leasing prioritization process it has conducted in accordance with IM-2016-143. The EA is silent on IM-2016-143 and does not describe a sage-grouse-related leasing prioritization process.

Although the EA asserts that no direct impacts to GRSG would occur since the parcels with sage-grouse habitat would be leased with the No Surface Occupancy (NSO) stipulation and that nine of the 20 parcels are NSO,¹ this is insufficient

¹ See EA at 7 and 29.

protection. The NSO stipulation does allow for surface occupancy in some circumstances and the Proposed Alternative does not unequivocally disallow doing so. The sage grouse PHMA parcels should not be leased, period.

IM 2016-143 identifies additional prioritization factors that BLM must consider. They are as follows:

- Parcels immediately adjacent or proximate to existing oil and gas leases and development operations or other land use development should be more appropriate for consideration before parcels that are not near existing operations. This is the most important factor to consider, as the objective is to minimize disturbance footprints and preserve the integrity of habitat for conservation.
- Parcels that are within existing Federal oil and gas units should be more appropriate for consideration than parcels not within existing Federal oil and gas units.
- Parcels in areas with higher potential for development (for example, considering the oil and gas potential maps developed by the BLM for the GRSG Plans) are more appropriate for consideration than parcels with lower potential for development. The Authorized Officer may conclude that an area has "higher potential" based on all pertinent information, and is not limited to the Reasonable Foreseeable Development (RFD) potential maps from Plans analysis.
- Parcels in areas of lower-value sage-grouse habitat or further away from important life-history habitat features (for example, distance from any active sage-grouse leks) are more appropriate for consideration than parcels in higher-value habitat or closer to important life-history habitat features (i.e. lek, nesting, winter range areas). At the time the leasing priority is determined, when leasing within GHMA or PHMA is considered, BLM should consider, first, areas determined to be non-sage-grouse habitat and then consider areas of lower value habitat.
- Parcels within areas having completed field-development Environmental Impact Statements or Master Leasing Plans that allow for adequate site-specific mitigation and are in conformance with the objectives and provisions in the GRSG Plans may be more appropriate for consideration than parcels that have not been evaluated by the BLM in this manner.
- Parcels within areas where law or regulation indicates that offering the lands for leasing is in the government's interest (such as in instances where there is drainage of Federal minerals, 43 CFR § 3162.2-2, or trespass drilling on unleased lands) will generally be considered more appropriate for leasing, but lease terms will include all appropriate conservation objectives and provisions from the GRSG Plans.

- As appropriate, use the BLM's Surface Disturbance Analysis and Reclamation Tracking Tool (SDARTT) to check EOI parcels in PHMA, to ensure that existing surface disturbance does not exceed the disturbance and density caps and that development of valid existing rights (Solid Minerals, ROW) for approved-but-not-yet-constructed surface disturbing activities would not exceed the caps.

Unfortunately, the BLM does not provide adequate information to the public in the EA about these additional factors. While the EA does disclose that one of the proposed parcels is within 3.1 miles of a sage grouse lek, there is no information about nesting habitat or winter range. In terms of winter range, the EA does not include any maps or other documents that identify winter range habitat for Greater sage-grouse. These should be included in the EA and any subsequent analysis.

Furthermore, the EA does not disclose any information about existing oil and gas leases or development in the project area. This information is essential for the public to determine if the foregoing prioritization factors were met or considered and should be included in the EA and any subsequent analysis.

Direct and Cumulative Impacts on Sage Grouse Breeding and Nesting Habitats from Roads

Roads have multiple impacts on sage grouse, including noise and movement from vehicle traffic causing disturbance, habitat fragmentation, and dust pollution that can depress productivity of sagebrush and other plants important to the diet of sage grouse. Sage grouse avoid habitats surrounding roads (Holloran 2005, Wisdom et al. 2011). Wisdom et al. (2011) found that extirpated range of sage grouse was closer to highways (mean = 3.1 miles) than occupied range for sage grouse.

Patricelli et al. (2012) tested the impact of road and drilling noise on sage grouse, and reached the following conclusions:

“...we recommend that interim management strategies focus not on limiting traffic noise levels, but rather on the siting of roads or the limitation of traffic volumes during crucial times of the day (6 pm to 9 am) and/or season (i.e. breeding season). We estimate that noise levels will typically drop to 30 dBA at 1.3 km (0.8 mi) and to 32 dBA at 1.1 km (0.7 mi) from the road (these levels represent 10 dB over ambient using 20 or 22 dBA ambient respectively). Therefore to avoid disruptive activity in areas crucial to mating, nesting and brood-rearing activities, we recommend that roads should be sited (or traffic should be seasonally limited) within 0.7-0.8 miles from the edge of these areas. We emphasize that we are not recommending the siting of roads 0.7-0.8 miles from the edge of the lek perimeter, but rather 0.7-0.8 miles from the edge of crucial lekking, nesting and early brood-rearing areas.”

The EA does not identify any stipulation related to roads and sage grouse that may be constructed in associated with leased parcels. In fact, the EA is mum on the issue of additional roads associated with mineral development. This should be remedied and included in the EA and any subsequent analysis.

Protections for Sage Grouse Wintering Habitats

Doherty et al. (2008) demonstrated that Greater sage-grouse avoided otherwise suitable wintering habitats once they have been developed for energy production, even after timing and lek buffer stipulations had been applied. In addition, Carpenter et al. (2010) found that wintering sage grouse avoided otherwise suitable habitats within a 1.2-mile radius of wellsites. Dzialek et al. (2012: 12) confirmed these relationships for wintering sage grouse, and concluded:

First, we can say with increasing confidence that the winter pattern of occurrence among sage-grouse shows consistency throughout disparate portions of its distribution. Second, avoidance of human activity appears to be a general feature of winter occurrence among sage-grouse.

This indicates a broad consistency in sage grouse sensitivity to human development in wintering habitats throughout the species' range.

As discussed above, the EA includes an NSO stipulation for sage grouse PHMA, but under some conditions, that stipulation allows surface occupancy. If surface occupancy is allowed, then stipulation UT-S-355 states there will be seasonal surface occupancy restrictions on winter habitat in PHMA. However, the restrictions required in UT-S-355 can be modified for time and distance, and thus could result in surface occupancy of sage grouse winter habitat in PHMA. Therefore, the EA should analyze potential impacts to sage grouse winter habitat and the sage grouse themselves should surface occupancy of sage grouse winter habitat in PHMA subsequently be allowed. In order that the public can adequately assess this analysis, the EA should provide maps that include all types of GSRG habitat including winter habitat.

Golden Eagles and Other Sensitive Raptor Species

The EA states that Golden eagles are quite common in the affected counties and that all the proposed lease parcels contain Golden eagle foraging habitat, but that no nests are known. (No distances from known nests are disclosed in the EA and should be included in the EA and any subsequent analysis.) In addition, the EA states that habitat for Bald Eagles occurs on six of the 20 parcels. (EA at 18) Furthermore, the EA describes potential impacts to Golden eagles, Bald eagles, Ferruginous hawks, Burrowing owls, and California condors² that could occur if

² The EA also notes that the lease parcels contain potential habitat for California condors, a species listed under the federal Endangered Species Act. (EA at 66)

the proposed lease parcels were developed. These include poaching, collisions with vehicles, direct loss of potential foraging and nesting habitats, harassment, displacement, and disturbance from noise. (EA at 29)

The two eagle species are protected by the Bald and Golden Eagle Protection Act, and all of five of these species are protected by the Migratory Bird Treaty Act. The Bald and Golden Eagle Act prohibits take without permits and defines take to include acts to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb (16 U.S.C. 668c; 50 CFR 22.3). The Migratory Bird Treaty Act (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755, as amended) prohibits a wide range of activities in relation to migratory birds, including killing them, unless otherwise permitted by regulations (e.g., take permits).

Although the EA contains stipulations related to these species, the stipulations themselves cannot authorize incidental take. Incidental take permits for Bald and Golden eagles can be obtained by project developers, and the regulations that authorize those permits were revised in 2016. These eagle take permit regulations could affect oil and gas development at these parcels. In the final Programmatic EIS for the revised eagle take permit regulations, the U.S. Fish and Wildlife Service states that some oil and gas projects could require long-term eagle take permits. (Eagle PEIS at 147-148)

Although the EA for this proposed lease sale acknowledges that take of birds protected by the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act could occur at oil and gas facilities on these proposed lease parcels, it does not discuss what would happen if illegal take occurred. This should be included in the EA and any subsequent analysis.

Crucial Winter Habitat for Mule Deer and Elk

The EA asserts that all 20 parcels proposed to be leased contain crucial winter habitat that provides shelter and forage for mule deer and elk. (EA at 17) Although the EA also includes stipulation UT-S-233 (Timing Limitation – Crucial Mule Deer and Elk Habitat), there are significant loopholes in that stipulation that require additional analysis in the EA. The stipulation restricts “surface disturbing activities in crucial mule deer and elk habitats from December 15 through April 15 to protect winter habitats,” but allows that the boundaries of the stipulation area can be modified or the stipulation can be completely waived. (EA at 56) Since the EA says the stipulation can be modified or waived, the EA should analyze potential impacts that could then occur.

Grazing

The EA states, “[t]he BLM administered lands are utilized by grazing cattle for a portion of the year.” (EA at 11) Furthermore, “Other activities, such as farming, livestock grazing, vegetation projects, and wildland fire have also occurred within some or all of the nominated parcels, and are likely to occur again in the future.” (EA at 32) However, neither the number of acres being grazed nor the number of AUMs are identified. In addition, the EA does not include any information about

whether these allotments are meeting Standards of Rangeland Health. The EA should disclose this information so that the public can identify potential cumulative impacts of any potential oil or gas wells on the affected parcels. Additionally, the EA should identify any rangeland infrastructure in the associated allotments that may have a negative impact on Greater sage-grouse and other wildlife and disclose any actions taken or proposed to mitigate these impacts. Again, this is relevant in terms of cumulative impacts from additional infrastructure related to new oil and gas wells.

The EA should also consider the potential for livestock grazing permit retirement as mitigation for unavoidable impacts associated with new mineral development.

Range of Alternatives

The EA analyzes two alternatives, the Proposed Action (Alternative A) and No Action (Alternative B). There is actually a third alternative described in the EA but it is not described or analyzed as such. According to the EA, nine of the EA's 16 stipulations can be excepted, modified or waived.³ Additionally, six of the 16 stipulations only apply in the case of exception to another stipulation being granted.⁴ These exceptions, modifications, and waivers would produce different outcomes to the environment and legally protected natural resources than either the Proposed Action or No Action Alternatives. For example, if the BLM grants an exception to UT-S-347, surface occupancy would be allowed inside a sage grouse PHMA when it otherwise would not. (EA at 56) Exceptions, modifications, or waivers could also occur with stipulations involving other sensitive resources such as air quality, riparian and wetland areas, VRM Class II areas, and crucial mule deer and elk winter habitat. (EA at 54-59)

Since the EA says excepting, modifying and/or waiving stipulations is possible, and the environmental impacts of doing so would be different than either of the two alternatives analyzed in the EA, this submerged and unanalyzed third alternative should be developed as an alternative in the EA. Otherwise, the Proposed Action should state clearly that exceptions, modifications or waivers to the stipulations will not be allowed.

Conclusion

Western Watersheds Project has serious concerns about the potential impacts of mineral development associated with the leased parcels identified in the EA, particularly those in Greater-sage-grouse PHMA. We hope that the Agencies will choose the no action alternative and commit to the protection of native wildlife species in this area.

³ According to the EA, exceptions can be granted to UT-S-01, 121, 161, 233, and 347. UT-S-233, 350, 353, 354, and 355 can be modified. UT-S-233 can be waived. (EA at 54-59)

⁴ According to the EA, UT-S-348, 349, 350, 352, 353, 354, and 355 apply *if* an exception to UT-S-347 is granted. (EA at 56-59)

Thank you again for this opportunity to assist the Agencies by providing comments for your review of the RFO Oil and Gas Lease Sale EA. If you have any questions or would like additional information, please feel free to contact me by telephone (928-322-8449) or by email at kfuller@westernwatersheds.org.

Please add Western Watersheds Project to the notification list for this EA process and any subsequent Applications for Permit to Drill, using the contact information below.

Sincerely yours,

A handwritten signature in dark ink that reads "Kelly Fuller". The signature is written in a cursive, flowing style.

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